

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

KIMBERLY MEADOR, ET AL.,

Plaintiffs,

v.

APPLE INC.

Defendant.

Civil Action No. 6:15-CV-00715-RWS-KNM

**DEFENDANT APPLE INC.'S RESPONSE IN OPPOSITION TO PLAINTIFFS'
MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Defendant Apple Inc. ("Apple"), and respectfully submits this Response in Opposition to Plaintiffs' Motion for Leave to File Second Amended Complaint.

I.

Plaintiffs' Motion for Leave to File Second Amended Complaint should be denied. Plaintiffs state in their Motion for Leave that they seek leave to file a second amended complaint because the Report and Recommendation ("R&R") recommends dismissal of Plaintiffs' claims against Apple. Dkt. 58, p.2. Plaintiffs make the same arguments in their Motion for Leave as they make in their Objections to Magistrate Judge Mitchell's R&R. For this reason, and rather than rehash the same arguments from Plaintiffs' Objections to the R&R, Apple incorporates its Response in Opposition to Plaintiffs' Objections to the Report and Recommendation of United States Magistrate Judge Regarding Defendant Apple Inc.'s Motion to Dismiss (Dkt. 64) as if fully set forth herein.

Magistrate Judge Mitchell specifically dealt with the issue of Plaintiffs amending their complaint and correctly held in her R&R:

Here, Plaintiffs have not requested leave to amend in the event the Court determines their claims should be dismissed. **Even if they had, though, an amendment would not cure the deficiencies identified above. Plaintiffs' First Amended Complaint sets forth their best case on the causation element of their claims, but still falls short of stating legally cognizable claims of strict products liability and negligence.** Accordingly, allowing Plaintiffs to amend their complaint would be futile under the facts presented in this case. Dkt. No. 54, p.10 (emphasis added).

Any amendment would still fall short of a plausible claim against Apple and would end up with the same result as the R&R—a recommendation of dismissal; therefore, Plaintiffs' request to amend their complaint is futile and frivolous. The Court clearly is permitted this discretion in determining whether to allow an amendment or not. Magistrate Judge Mitchell correctly concluded that although plaintiffs are normally afforded an opportunity to amend their pleadings before dismissal, an amendment in this case would not cure the deficiencies in Plaintiffs' Complaint. Therefore, Plaintiffs should not be permitted to amend their complaint, and Plaintiffs' Motion for Leave to File Second Amended Complaint should be denied.

Dated: September 23, 2016

Respectfully submitted,

By: /s/ Eric H. Findlay
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CERTIFICATE OF SERVICE

The undersigned certifies that on September 23, 2016, the foregoing document was filed electronically in compliance with Local Rule CV-5(a). This Response was served on all counsel by electronic filing.

/s/ Eric H. Findlay
Eric H. Findlay